



REPUBLIC OF KENYA
IN THE HIGH COURT
AT MIGORI
SUCCESSION CAUSE NO. 228 OF 2015
(Formerly Migori SRM Succession Cause No. 172 of 2004)
IN THE MATTER OF THE ESTATE OF
JOHN ROBERT OTIENO WASONGA (Deceased)
BETWEEN
PETER OOKO OTIENO.....APPLICANT
AND
GEORGE AWINO OTIENO.....PETITIONER/ RESPONDENT

RULING

1. The grant of letters of administration intestate for the estate of John Robert Otieno Wasonga (deceased), who died on 30th May 1972, was issued on 22nd June 2004 to George Owino Otieno in ***Migori SRM Succession Cause No. 172 of 2004*** and confirmed on 27th May 2005. The whole of the deceased estate comprising land parcel **SOUTH SAKWA/WAWARE/291** became vested in the said George Awino Otieno.
2. According to the summons for revocation filed by the applicant dated 12th June 2015, the applicant seeks revocation of the grant, inter alia, on the grounds that the respondent has failed to administer the estate of the deceased with diligence.
3. I have considered the summons before me and I am satisfied that this court has jurisdiction to revoke or annul the grant as is clearly as set out in **section 76** of the ***Law of Succession Act (Chapter 160 of the Laws of Kenya)***. In my view, the grant which was confirmed was contrary to the law and this court is entitled to act even on its own motion.
4. A court confirming the grant is obliged to identify the share of each beneficiary before confirming the grant. The proviso to **section 71** of the ***Law of Succession Act*** states;

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

5. From the form P & A5, it is clear that the deceased had several beneficiaries surviving him. It was thus improper for the court to give the respondent the whole of the property when the other beneficiaries were entitled to specific shares which had to be ascertained. It is for this reason that the parties appear to be at loggerheads.

6. For the reasons I have given and in order to obviate further proceedings I now make the following orders;

a. I revoke the grant of letters of administration intestate issued to George Owino Otieno on 22nd June 2004 and confirmed on 27th May 2005 in *Migori SRM Succession Cause No. 172 of 2004*;

b. A fresh grant shall issue to **PETER OOKO OTIENO, JAMES OTIENO** and **GEORGE AWINO OTIENO** forthwith.

c. The administrators or any of them shall present an application for confirmation of grant within **thirty (30) days** from the date hereof.

d. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 16th day of July 2015.

D.S. MAJANJA

JUDGE

Mr Okong'o instructed by Okong'o Wandago and Company Advocates for the applicant.

Respondent in person.